

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

GREGORY DAVID DRAKE

v.

UNITED STATES OF AMERICA

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No. 1:04-cv-149 / 1:02-cr-216  
*Edgar*

**O R D E R**

In accordance with the accompanying memorandum, the Court **GRANTS** the government's motion for an extension of time to respond [Doc. No. 4] and Gregory David Drake's motion to amend his § 2255 motion [Doc. No. 6]. However, for the reasons expressed in the accompanying memorandum, Drake's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 1] is **DENIED**. This action for post-conviction relief is **DISMISSED**.

Should Drake file a timely notice of an appeal from this order, such notice will be treated as an application for a certificate of appealability, which is hereby **DENIED** since he has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); FED. R. APP. P. 22(b).

In addition, the Court has reviewed this case pursuant to 28 U.S.C. § 1915(a)(3) and Rule 24 of the FEDERAL RULES OF APPELLATE PROCEDURE and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, any application by Drake for leave to proceed *in forma pauperis* on appeal is **DENIED**. 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24.

SO ORDERED.

ENTER this *23rd of May, 2005*.

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*/s/ R. Allan Edgar*  
R. ALLAN EDGAR  
CHIEF UNITED STATES DISTRICT JUDGE